

**California Regional Water Quality Control Board
Santa Ana Region
Staff Report**

April 15, 2005

ITEM: 26

SUBJECT: Mandatory Penalty Complaint No. R8-2005-0019, South Gate Engineering, LLC, Chino, San Bernardino County

BACKGROUND

On March 2, 2005, the Executive Officer issued Mandatory Penalties Complaint (MPC) No. R8-2005-0019 to South Gate Engineering, LLC (hereinafter South Gate Engineering) for alleged violations of the State General Permit for Storm Water Runoff Associated with Industrial Activity (General Permit). In the MPC (attached), the Executive Officer proposed an assessment of \$1,000 for the alleged violation.

INTRODUCTION

The matter before the California Regional Water Quality Control Board, Santa Ana Region (Board), is whether to adopt Order No. R8-2005-0020 affirming the proposed mandatory penalty complaint against South Gate Engineering .

MPC Order No. R8-2005-0019 was issued by the Executive Officer to South Gate Engineering for failing to submit the Annual Report as required by the General Permit.

DISCUSSION

The General Permit regulates the discharge of storm water from industrial sites as required under Section 402(p) of the Federal Clean Water Act. Coverage under the permit is obtained by filing a Notice of Intent (NOI), site map, and fee (annual fee of \$830), with the State Water Resources Control Board. One of the requirements of the General Permit is that permittees submit, by July 1 of each year, an annual report that documents: storm water sampling and analysis results; visual observations of facility conditions; the facility's Annual Comprehensive Site Compliance Evaluation; and, a certification as to the accuracy of the submitted information.

The General Permit requires all facility operators to submit an annual report by July 1 of each year. Because Board staff did not receive the annual report by the July 1, 2004 deadline, a Notice of Noncompliance (NNC) was issued to South Gate Engineering, by certified mail, on July 26, 2004. When Board staff received no response to the first NNC, a second NNC was issued on September 2, 2004, again by certified mail. The addressee received both letters. In both NNCs, Board staff requested submittal of the completed annual report, a statement explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure

South Gate Engineering, LLC, (staff report)

to submit the annual report. In the second NNC, Board staff requested submittal of the completed annual report by September 17, 2004.

South Gate Engineering failed to submit the required Annual Report to the Regional Board office within 60 days from the date on which the original Notice of Noncompliance was sent. Under these circumstances, Section 13399.33(c) of the California Water Code requires that a mandatory penalty shall be administratively imposed by the Regional Board in an amount that is not less than one thousand dollars (\$1,000).

STATEWIDE ENFORCEMENT POLICY

On February 19, 2002, the State Water Resources Control Board adopted a State Water Quality Enforcement Policy to ensure that enforcement actions throughout the State are fair, firm, and consistent. The above-described mandatory penalties complaint is in accordance with the State Enforcement Policy.

RECOMMENDATION

Board staff recommends that the Board affirm the assessment of \$1,000 specified in the Mandatory Penalty Complaint issued by the Executive Officer on March 2, 2005, by adopting Order No. R8-2005-0020.

5. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that, pursuant to California Water Code Section 13399.33(c), a mandatory penalty shall be imposed on South Gate Engineering, in the amount of \$1,000, as proposed in Complaint No. R8-2005-0019 for the violations cited, payable as set forth below.

1. South Gate Engineering shall pay \$1,000 to the State Water Resources Control Board by May 16, 2005.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for a review of this Order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this Order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on April 15, 2004.

Gerard J. Thibeault
Executive Officer

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the matter of:)	Complaint No. R8-2005-0019
)	for
South Gate Engineering, LLC)	Mandatory Penalty
13477 Yorba Avenue)	
Chino, CA 91710-5055)	
Atten: Mr. William Paolino)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. You are alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), must impose liability under Section 13399.33 of the California Water Code.
2. A hearing concerning this Complaint will be held before the Board within ninety days of the date of issuance of this Complaint. The hearing in this matter has been scheduled for the Board's regular meeting on April 15, 2005 at the City Council Chambers of Loma Linda, 25541 Barton Road, Loma Linda, CA 92354. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of mandatory penalties by the Board. An agenda for the meeting will be mailed to you not less than 10 days before the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed Mandatory Penalty Complaint or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. South Gate Engineering, LLC. (hereinafter South Gate Engineering), located at 13477 Yorba Avenue in Chino, is currently regulated under the State's General Permit for Storm Water Discharges Associated with Industrial Activities, Water Quality Order No. 97-03-DWQ, NPDES No. CAS000001 (General Permit). The facility's WDID Number is 8 361017215. The General Permit requires submittal of an annual report by July 1 of each year.
5. Because the annual report was not received by Board staff by the July 1, 2004 deadline, a Notice of Non-Compliance (NNC) was issued to South Gate Engineering, by certified mail, on July 26, 2004. The return receipt showed it was received on July 28, 2004. When Board staff received no response to the first NNC, a second NNC was issued on September 2, 2004, again by certified mail, and was received on September 7, 2004. In the second NNC, Board staff requested submittal of the completed annual report by September 17, 2004. In both NNCs, Board staff requested submittal of the annual report, a statement

explaining why the annual report was not submitted by the July 1 deadline, and the measures that would be taken to ensure that future annual reports are submitted on time. Both NNCs also identified the mandatory minimum penalty for failure to submit the annual report.


6. The annual report was received in this office on December 14, 2004. This facility violated the General Permit, the Federal Clean Water Act and the California Water Code by failing to submit the annual report by July 1, 2004.
7. Section 13385(a)(2) of the California Water Code provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
8. Based on non-submittal of the 2003-2004 Annual Report, the facility is alleged to have violated the General Permit for 165 days (from July 1, 2004 to December 13, 2004, excluding both days). The total maximum liability for this violation is \$1,650,000.
9. Section 13399.33(c) of the California Water Code requires that the Regional Board impose a mandatory minimum penalty of \$1,000 for any person who fails to submit an annual report in accordance with Section 13399.31 of the Water Code.
10. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. After consideration of those factors, the Executive Officer proposes that the mandatory minimum penalty of \$1,000 be imposed on the facility for the violation cited above.

WAIVER OF HEARING

You may waive your right to a hearing. If you choose to do so, please sign the attached waiver form and mail it, together with a check or money order payable to the State Water Resources Control Board for \$1,000. The bottom portion of the invoice, the waiver form, and the check or money order should be mailed to Sacramento in the enclosed envelope.

If you have any questions, please contact Mary Bartholomew at (951) 321-4586 or Milasol Gaslan at (951) 782-4419. For legal questions, contact the Regional Board's legal counsel, Jorge Leon at (916) 341-5180.

3/2/05
Date



Gerard J. Thibeault
Executive Officer

))

for

)
)
)
)

)

for South Gate Engineering, LLC